L.N. 205 of 2007

CIVIL AVIATION ACT
(CAP. 232)

Civil Aviation (Identity of Air Carrier) Order, 2007

IN exercise of the powers conferred by article 3 of the Civil Aviation Act, the Minister for Competitiveness and Communications has made the following Order:-

1. The title of this Order is the Civil Aviation (Identity of Air Carrier) Order 2007. Title.

2. In this Order, unless the context requires otherwise Interpretation.

"air carrier" means an air transport undertaking with a valid air service licence or equivalent;

"contract of carriage" means a contract for or including air transport services, including one where the carriage is composed of two or more flights operated by the same or different air carriers;

"air carriage contractor" means the carrier which concludes a contract of carriage with a passenger or, where the contract comprises a package, the tour operator. Any ticket seller shall also be deemed an air carriage contractor;

"the Community" means the European Union;

"Community List" means the List of air carriers that are subject to an operating ban within the Community as set out by Regulation (EC) No. 2111/2005;

"Directive 90/314/EEC" means the Council Directive of 13 June 1990 on package travel, package holidays and package tours;

"Director" means the Director of Civil Aviation and, to the extent of the authority given, any person authorised in that behalf by the Director;

"EC Regulation 261/2004" means the European Parliament and Council Regulation of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights; and repealing Regulation (EC) No 295/91;

"operating air carrier" means an air carrier that performs or intends to perform a flight under a contract of carriage with a passenger, or on behalf of another person, legal or natural, having a contract of carriage with that passenger;

"operating ban" means the refusal, suspension, revocation or restriction of an air carrier's operating authorisation or technical permission for safety reasons, or any equivalent safety measures in respect of an air carrier which has no traffic rights in the Community but whose aircraft might otherwise be operated in the Community under a lease agreement;

"package" means those services defined in Article 2(1) of Directive 90/314/EEC;

"Regulation EEC No. 2299/89" means Council Regulation (EEC) No. 2299/89 of 24 July 1989 on a Code of conduct for Computerised Reservation Systems;

"reservation" means the fact that the passenger has a ticket or other proof, which indicates that the reservation has been accepted and registered by the air carriage contractor;

"ticket seller" means the seller of an air ticket who arranges a contract of carriage with a passenger, whether for a flight on its own or as part of a package, other than an air carrier or a tour operator.

Applicability of Order.

3. (1) The provisions of this Order shall apply to the carriage of passengers by air, when the flight is part of a contract of carriage and that carriage started from a Member State of the Community, and

(a) the flight departs from an airport in Malta, or

(b) the flight departs from an airport in a non-Community country and arrives in Malta, or

(c) the flight is operated by a Maltese air carrier and departs from an airport in a third country to another such airport.

(2) The provisions of sub-article (1) hereof shall apply to both scheduled and non-scheduled flights irrespectively of whether the flight is part of a package or otherwise.

Obligations of air carriage contractor and ticket seller

4. (1) The air carriage contractor shall upon making a reservation for a passenger inform him of the identity of the operating air carrier or carriers, whatever the means used to make the reservation.

(2) When the identity of the operating air carrier is not yet known at the time of reservation, the air carriage contractor shall ensure that the passenger is informed of the name or names of the air carrier or carriers that is or are likely to act as operating air carrier or carriers on the flight or flights concerned. In such case the air carriage contractor shall ensure that the passenger is informed of the identity of the operating air carrier or carriers as soon as their identity is established.

(3) Wherever the operating air carrier or carriers is or are changed after reservation, the air carriage contractor shall, irrespective of the reason of the change, take immediately all appropriate steps to ensure that the passenger is informed of the change as soon as possible. In all cases, passengers shall be informed at check-in, or on boarding where no check-in is required for a connecting flight.

(4) The air carrier or the tour operator, as the case may be, shall ensure that the relevant air carriage contractor is informed of the identity of the operating air carrier or carriers as soon as this is known, in particular in the event of a change of such identity.

(5) The obligation of the air carriage contractor to inform passengers of the identity of the operating air carrier or carriers shall be specified in the general terms of sale applicable to the contract of carriage.

Rights under EC Regulation 261/2004

5. (1) In cases where EC Regulation 261/2004, does not apply, and

(a) the operating air carrier notified to the passenger has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which would have led to such cancellation if the flight concerned had been operated in the Community; or

(b) the operating air carrier notified to the passenger has been replaced by another operating air carrier which has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which

would have led to such cancellation if the flight concerned had been operated in the Community,

the air carriage contractor which is party to the contract of carriage shall offer the passenger the right to reimbursement or re-routing in accordance with Article 8 of EC Regulation 261/2004, provided that, when the flight has not been cancelled, the passenger has chosen not to take that flight.

(2) Sub-article (1) hereof shall apply without prejudice to the provisions of Article 13 of Regulation (EC) No 261/2004.

Rights under Directive 90/314/EEC and Regulation EEC No. 2299/89.

6. Nothing in this Order shall affect the rights of passengers under the provisions of Directive 90/314/EEC and Regulation EEC No. 2299/89.

Proof of compliance with Order.

7. (1) In the event that an air carriage contractor does not comply with the provisions of article 4 hereof and a passenger makes a complaint in that sense to the Director, it shall be for the air carriage contractor to prove that compliance with the provisions of article 4 was effected and it shall be a defence for that air carriage contractor to show that he took all reasonable steps to avoid committing the offence.

(2) An air carriage contractor shall not be entitled to rely on the defence provided by sub-article (1) by reason of his reliance on information supplied by another, unless the air carriage contractor against whom proceedings have been commenced demonstrates that it was reasonable in all the circumstances to have relied on the information in question.

(3) If a ticket seller has not been informed of the identity of the operating air carrier, he shall not be responsible for not complying with the obligations provided for in this sub-article.

Non-compliance with the Order.

8. An air carriage contractor, who does not comply with sub-articles (1), (2), (3) and (5) of article 4 shall be deemed to be in contravention of the Order.

Penalty.

9. A person who contravenes any provisions of this Order shall on summary conviction be liable to a fine (*multa*) of not less than Lm100 and not more than Lm500.

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